IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.685 OF 2006

Smt. Shubhangi wd/o. Ramkisan Cheulkar .. Appellant

versus

The Municipal Corpn. of Gr. Bombay .. Respondent

...

Mr.V.V. Mishra for appellant

Mrs. Geeta Joglekar for respondent

**CORAM : D.G. KARNIK, J**

**DATED :5th October, 2006.**

**P.C:-**

1. Heard counsel for the parties.

2. This appeal is directed against the order dated 3rd March, 2006 passed by the City Civil Court dismissing the appellant's Notice of Motion No.4308 of

1999 for injunction against demolition of his unauthorised structure on the road.

3. The respondent municipal corporation issued a notice on 17th February, 1997 to the appellant under Section 314 of the Bombay Municipal Corporation Act (for short 'the Act'). The appellant did not reply the said notice nor showed cause that the structure was authorised or was not constructed on the public street, but straightway filed suit bearing L.C. Suit No.5256 of 1999 in the City Civil Court, Mumbai for injunction. In the said Suit he took out a Notice of Motion No.4308 of 1999 for an injunction restraining the respondents from demolishing his stall. After carefuly considering the material adduced before it, the City Civil Court came to the conclusion that the stall was on the public road and not in the tenanted premises as alleged by the appellant. In view of this the trial court dismissed the Motion.

4. Learned counsel for the appellant was unable to point out any material which shows that the stall was constructed not on the public street but on private property and that he was tenant of anybody. In the circumstances the findings that the stall was on a

public street, is a finding of fact which apparently is a proper finding. In view of this appellant is not entitled for any injunction. No error is found in the findings of the trial court. Appeal is dismissed summarily.

( D.G. KARNIK, J.)